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FEDERAL HOUSING FINANCE AGENCY

12 CFR Part 1242

RIN 2590-AB13

Resolution Planning

AGENCY: Federal Housing Finance Agency.

ACTION: Final Rule.

SUMMARY: The Federal Housing Finance Agency (FHFA) is publishing a final rule that requires Fannie Mae and Freddie Mac (the Enterprises) to develop plans to facilitate their rapid and orderly resolution in the event FHFA is appointed receiver. A resolution planning rule is an important part of FHFA’s ongoing effort to develop a robust prudential regulatory framework for the Enterprises, including capital, liquidity, and stress testing requirements, as well as enhanced supervision, which will be critical to FHFA’s supervision of the Enterprises particularly in the event of an exit from conservatorship. Requiring the Enterprises to develop resolution plans would support FHFA’s efforts as receiver for the Enterprises to, among other things, minimize disruption in the national housing finance markets by providing for the continued operation of an Enterprise’s core business lines (CBLs) by a limited-life regulated entity (LLRE); ensure that private-sector investors in Enterprise securities, including Enterprise debt, stand to bear losses in accordance with the statutory priority of payments while minimizing unnecessary losses and costs to these investors. In addition, resolution planning will help foster market discipline in part through FHFA publication of “public” sections of Enterprise resolution plans.

DATES: This rule is effective on **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

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I. Introduction

A. Background; Purpose of and Need for the Rule

Enterprise Purpose and Business. Fannie Mae and Freddie Mac are federally chartered housing finance enterprises whose purposes include providing stability to the secondary market for residential mortgages; providing ongoing assistance to the secondary market for residential mortgages (including activities related to mortgages on housing for low- and moderate-income families) by increasing the liquidity of mortgage investments and improving distribution of investment capital available for residential mortgage financing; and, promoting access to mortgage credit throughout the United States, including central cities, rural areas, and underserved areas, by increasing the liquidity of mortgage investments and improving the distribution of investment capital available for residential mortgage financing.¹ To meet these purposes, the Enterprises are statutorily authorized to engage in limited activities – primarily, the purchase and securitization of eligible mortgage loans – and are directed to use their authority in certain ways, such as meeting statutorily required goals related to housing loans for low- and very low-income families and serving underserved housing markets.²

¹ 12 U.S.C. 1451 (note) and 1716.

² See, e.g., *id.* 1454, 1723a, 4561, and 4565.

Each Enterprise generally organizes its business activity into a single-family business and a multifamily business. The Enterprises' combined single-family book of business is in excess of \$5 trillion and the combined multifamily book is approximately \$650 billion.

The Enterprise business models for supporting single-family and multifamily housing consist primarily of a guarantee business in which the Enterprises guarantee the timely payment of principal and interest to investors in mortgage-backed securities (MBS) issued by the Enterprises.³ Mortgage lenders participate in the MBS swap and cash window programs, originating loans in accordance with Enterprise standards and either providing those loans to an Enterprise in exchange for securities guaranteed by the Enterprise or selling loans directly to the Enterprise for cash. In the portfolio business, the Enterprises issue debt and invest the proceeds in whole loans or in MBS that they hold on their balance sheets. In both their portfolio and guarantee businesses, the Enterprises assume credit risk on purchased or securitized loans (in MBS swap and cash programs, the Enterprise assumes the credit risk in exchange for a guarantee fee).

The Enterprises' guarantee of timely payment of principal and interest to investors is not backed by the full faith and credit of the United States.⁴ The Enterprises are required to state in all of their obligations and securities that such obligations and securities, including the interest thereon, are not guaranteed by the United States and do not constitute a debt or obligation of the United States or any agency or instrumentality thereof other than the Enterprise itself.⁵ Nonetheless, because of the Enterprises' federal

³ In general, the Enterprises do not cross-guarantee each other's MBS. However, Supers, which are resecuritizations of Enterprise uniform mortgage-backed securities (UMBS), may be supported by UMBS issued by both Enterprises. In the case of such "commingled" Supers, the guarantor is the issuing Enterprise, but the issuing Enterprise may look to the non-issuing Enterprise to cover timely payments of principal and interest through the issuing Enterprise's guarantee on its underlying UMBS. The Enterprise that issues and guarantees the Supers is ultimately responsible to the investor for making those payments.

⁴ Compare 12 U.S.C. 1717(a)(2)(A), 1455(h)(2), and 1719(d); see also *id.* 4501(4) and 4503.

⁵ *Id.* 1455(h)(2) and 1719(d). Since September 2008, the Enterprises have been provided explicit, but limited, support by the U.S. Department of the Treasury through Senior Preferred Stock Purchase Agreements (PSPAs) to assure continuing operation of the Enterprises in conservatorships. See

statutory charters and some federally conferred business privileges,⁶ pricing of Enterprise obligations suggested, even before the provision of explicit Treasury support at the time of the financial crisis, that investors perceive a full faith and credit guarantee.⁷ Investors may have been relying on this perception when deciding to invest in the Enterprises' debt and MBS at borrowing costs near that of debt issued by the federal government, despite the Enterprises' high leverage. That same perception may encourage typically conservative investors, including foreign sovereigns, to purchase Enterprise obligations and securities. The perception of an implicit guarantee thus undermines market discipline and incentivizes risk taking and growth at the Enterprises.

Enterprise Supervision; Resolution. As regulator and supervisor of the Enterprises, FHFA's duties include ensuring that the Enterprises operate in a safe and sound manner; foster liquid, efficient, competitive, and resilient national housing finance markets; and, operate in a manner that is consistent with the public interest.⁸ FHFA is also authorized to appoint itself as conservator or receiver of an Enterprise if statutory grounds are met.⁹ When appointed receiver of an Enterprise, FHFA must establish a limited-life regulated entity (LLRE), which immediately succeeds to the Enterprise's federal charter and thereafter operates subject to the Enterprise's authorities and duties.¹⁰ Because Enterprise obligations and securities are not backed by the full faith and credit of the United States, resolution of an Enterprise by FHFA necessarily would involve only the Enterprise's resources available to absorb losses and satisfy investor and creditor

<https://www.fhfa.gov/Conservatorship/Pages/Senior-Preferred-Stock-Purchase-Agreements.aspx>. The PSPAs currently remain in place, and each PSPA establishes a limit or cap on the amount of support Treasury will provide, so they are not an exercise of the full faith and credit of the United States.

⁶ The Enterprises may be depositories of public money; are exempt from almost all federal, state, and local taxation; and, are not required to be licensed to do business in any state. *Id.* 1452(d) and (e), 1456(a), 1723a(c)(2), and 1723a(a). Enterprise securities are exempt securities within the meaning of laws administered by the U.S. Securities and Exchange Commission, and the Secretary of the Treasury may purchase their obligations and may do so with public money. *Id.* 1455(c) and (g), 1719(c) and (e), and 1723c.

⁷ See <https://www.fhfa.gov/PolicyProgramsResearch/Research/Pages/Working-Paper-07-4.aspx>.

⁸ 12 U.S.C. 4513(a)(1)(B).

⁹ *Id.* 4617(a).

¹⁰ *Id.* 4617(i)(1)(A)(ii) and (2)(A).

claims—Enterprise assets, capital and capital-like instruments, and contracts that transfer risk of loss to third parties.

In September 2008, when it was apparent that substantial deterioration in the housing market would leave the Enterprises unable to fulfill their statutory purposes and mission without government intervention, FHFA appointed itself conservator of each Enterprise.¹¹ At the same time, as conservator for each Enterprise, FHFA entered into the Senior Preferred Stock Purchase Agreements (PSPAs) with the U.S. Department of the Treasury (Treasury or Treasury Department) to provide each Enterprise financial support up to a specified amount.¹² This limited support, which continues to the present, permits the Enterprises to meet their outstanding obligations and continue to provide liquidity to the mortgage markets while maintaining a positive net worth.

The Enterprise conservatorships have lasted for over twelve years, considerably longer than any conservatorship under the auspices of the Federal Deposit Insurance Corporation (FDIC) or the Resolution Trust Corporation (established to resolve failed thrifts following the 1989 thrift crisis and since abolished).¹³ FHFA’s current Strategic Plan includes the objective of responsibly ending the conservatorships.¹⁴ In preparation, FHFA is developing a more robust prudential regulatory framework for the Enterprises, including capital, liquidity, and stress testing requirements, and enhanced supervision.

FHFA believes a resolution planning rule is also an important part of developing such a framework and is a key step toward the robust regulatory post-conservatorship framework FHFA is developing. The Treasury Department’s 2019 *Housing Reform Plan* also noted the importance of developing a credible resolution framework for the

¹¹ See <https://www.fhfa.gov/Media/PublicAffairs/Pages/Statement-of-FHFA-Director-James-B--Lockhart-at-News-Conference-Announcing-Conservatorship-of-Fannie-Mac-and-Freddie-Mac.aspx>.

¹² See *supra*, fn. 4.

¹³ By comparison, the RTC closed 706 failed thrift institution conservatorships from its establishment in 1989 through June 1995. See FDIC, *Managing the Crisis: The FDIC and RTC Experience, 1980-1994* (1998), vol. 1, 27.

¹⁴ See https://www.fhfa.gov/AboutUs/Reports/ReportDocuments/FHFA_StrategicPlan_2021-2024_Final.pdf.

Enterprises to protect taxpayers, enhance market discipline, and mitigate moral hazard and systemic risk.¹⁵ FHFA shares that Plan's view of the benefits of a credible Enterprise resolution framework. Finally, by providing that the charter of an Enterprise that has been placed into receivership be transferred immediately to the LLRE upon its organization¹⁶ and prohibiting FHFA from terminating the charter,¹⁷ the Safety and Soundness Act effectively requires that an Enterprise resolution through receivership be viable. Resolution planning would be a key element of implementing that statutory mandate, and thus of meeting congressional intent.

For the foregoing reasons, FHFA proposed a rule that would require the Enterprises to develop credible resolution plans and submit them to FHFA for review, set forth information and other content requirements for such plans, and establish procedures for submission and review.¹⁸ The proposed rule is summarized for convenience below.

In developing an Enterprise resolution planning framework, FHFA has considered the resolution planning framework of the FDIC for large insured depository institutions (IDIs) and a framework jointly established by the FDIC and the Federal Reserve Board (FRB) pursuant to section 165(d) of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (the DFA section 165 rule), which covers large, interconnected bank holding companies and nonbank financial companies designated by the Financial Stability Oversight Council for enhanced supervision by the FRB. While there would be significant differences among FDIC resolution of an IDI, resolution of a bank holding company in a bankruptcy proceeding, and FHFA resolution of an Enterprise, the FDIC's IDI rule and the DFA section 165 rule provided valuable context for FHFA's

¹⁵ See U.S. Department of the Treasury, *Housing Reform Plan* (September, 2019), available at <https://home.treasury.gov/system/files/136/Treasury-Housing-Finance-Reform-Plan.pdf>.

¹⁶ See 12 U.S.C. 4617(i)(2).

¹⁷ See 12 U.S.C. 4617(k).

¹⁸ See 86 FR 1326 (Jan. 8, 2021).

consideration of the goals and requirements of an appropriate Enterprise resolution planning framework in view of FHFA's statutory authorities and mandates.

B. Overview of the Proposed Rule

In the proposed rule, FHFA addressed the substantive and procedural requirements for "credible" Enterprise resolution plans that would be developed to facilitate their "rapid and orderly resolution" by FHFA as receiver. Because FHFA is statutorily required to create an LLRE for an Enterprise in receivership, and because the LLRE immediately succeeds to the Enterprise's federal charter and thereafter operates subject to the Enterprise's authorities and duties, FHFA proposed to define "rapid and orderly resolution" for an Enterprise as the process for establishing its successor LLRE, including transferring Enterprise assets and liabilities to the LLRE, such that succession can be accomplished promptly and in a manner that substantially mitigates the risk that the failure of the Enterprise would have serious adverse effects on national housing finance markets.

The Enterprise resolution planning process would begin with identification of an Enterprise's "core business lines" (CBLs) – those business lines of the Enterprise that plausibly would continue to operate in the LLRE, considering the Enterprise's statutory purposes, mission, and authorized activities. Identification of CBLs would include identification of associated operations, services, functions, and supports necessary for each CBL to be continued. Understanding CBLs will enable FHFA and the Enterprise to determine the operations of the LLRE, and what assets and liabilities must be transferred from the Enterprise to carry out those operations. FHFA proposed a two-step process for identifying CBLs, in which FHFA would determine Enterprise CBLs after reviewing the Enterprises' preliminary identification. That process is intended to balance FHFA's statutory responsibilities as supervisor of the Enterprises with the Enterprises' greater awareness of their own business operations.

Other proposed substantive requirements addressed the content of Enterprise resolution plans. FHFA proposed to require each resolution plan to contain strategic analysis and information important to understanding an Enterprise's CBLs and facilitating their continuation in an LLRE established by FHFA as receiver. Each resolution plan would also be required to reflect required and prohibited assumptions.

Specifically, each Enterprise would be required to consider that resolution may occur under the severely adverse economic conditions provided to the Enterprise by FHFA in conjunction with any stress testing required pursuant to FHFA's regulation on stress testing of the regulated entities, 12 CFR part 1238, or another scenario provided by FHFA, possibly more idiosyncratic to an Enterprise. Similar to the DFA section 165 rule, each Enterprise would be prohibited from assuming that any extraordinary support from the United States government would be continued or provided to the Enterprise to prevent either its becoming in danger of default or in default.¹⁹ For the Enterprises, this includes support obtained or negotiated on behalf of the Enterprises by FHFA in its capacity as conservator of each Enterprise through the PSPAs with the Treasury Department. Each Enterprise's resolution plan would also be required to reflect statutory provisions that the Enterprise's "obligations and securities, together with interest thereon, are not guaranteed by the United States and do not constitute a debt or obligation of the United States or any agency or instrumentality thereof other than [the Enterprise]."²⁰

Each Enterprise's strategic analysis would detail how, in practice, the Enterprise could be resolved through FHFA's receivership authority by liquidating assets or by transferring them to an LLRE, which would continue to operate the Enterprise's CBLs. Among other elements, this analysis would address: (1) actions that the Enterprise could take to facilitate its rapid and orderly resolution, including those actions it plans to take

¹⁹ *Compare*, 12 CFR 243.4(h)(2).

²⁰ 12 U.S.C. 1455(h)(2) and 1719(d).

and the time period for successfully executing them; (2) funding, liquidity, support functions, and other resources, mapped to the Enterprise's CBLs, including the amount of capital and capital-like instruments (such as subordinated debt, convertible debt, other contingent capital, mortgage insurance, and CRT transactions) available to absorb losses before imposing losses on creditors or investors, mapped to associated assets; (3) the Enterprise's strategy for maintaining and funding its CBLs when the Enterprise is becoming in danger of default or in default; (4) capital support that will be needed by an LLRE, both during its life and when its status as a "limited-life" regulated entity ends, to maintain market confidence; (5) the Enterprise's strategy in the event of a failure or discontinuation of a CBL (including an associated operation, service, function, or support that is critical to a CBL) and actions that could be taken to prevent or mitigate any adverse effects of such failure or discontinuation on the national housing finance markets; (6) how and the extent to which claims against the Enterprise by the Enterprise's creditors and counterparties would be satisfied in accordance with FHFA's regulation setting forth the priority of expenses and unsecured claims set forth at 12 CFR 1237.9, consistent with continuation of the Enterprise's CBLs by an LLRE; and (7) the Enterprise's strategy for transferring or unwinding qualified financial contracts, consistent with applicable statutory requirements.²¹

Each Enterprise's strategic plan would also be required to identify and describe potential material weaknesses or impediments to rapid and orderly resolution as conceived in its plan, and any actions or steps the Enterprise has taken or proposes to take, or actions or steps that other market participants could take, to address the identified weaknesses or impediments. The Enterprise would be required to include a timeline for such remedial or other mitigating actions that are under its control.

²¹ "Qualified financial contracts" are defined and the requirements for their transfer or unwinding are set forth at 12 U.S.C. 4617(d)(8) through (11).

In addition to strategic analysis, the proposed rule set forth other information requirements for Enterprise resolution plans, including key information about the Enterprise’s structure, governance, operations, business practices, financial responsibilities, and risk exposures. The proposed rule also addressed Enterprise development and maintenance of resolution-related capabilities to be assessed or verified periodically by FHFA that could generate, on a timely basis, critical information (*e.g.*, identification of key personnel) that FHFA would need as receiver to fulfill its statutory duties. Together, these components would help inform the immediate establishment of the LLRE to continue Enterprise business functions, including an informed division of assets and liabilities between the Enterprise receivership estate and a newly established LLRE.

Advance information, strategic analysis, and action, where appropriate, would also support other important goals of a rapid and orderly Enterprise resolution—to minimize disruption in the national housing finance markets, preserve Enterprise franchise and asset value, and ensure creditors bear losses in the order of their priority.²² These goals work in concert, since a disruption of national housing finance markets also could increase costs to FHFA as receiver to the detriment of claimants on an Enterprise’s receivership estate. Likewise, transparency in the Enterprises’ resolution planning process, including a proposed requirement that each Enterprise resolution plan contain a “public section” that FHFA would publish, would further another important policy goal—fostering market discipline.

In addition to the substantive requirements of Enterprise resolution plans, the proposed rule addressed procedural requirements related to resolution planning, including the dates for submission of initial and subsequent resolution plans; FHFA review of and

²² Advance action could include, for example, ensuring that certain arrangements (master netting agreements related to qualified financial contracts, for example) are resilient to the creation of and transfer of assets to an LLRE.

feedback on Enterprise resolution plans, including identification and notice of any deficiencies; requirements related to submission of revised resolution plans, to address identified deficiencies; the confidential treatment of all information that is not included in the plan's "public" section; and identification of the resolution planning rule as a prudential standard. In addition, FHFA clarified that neither the Enterprise resolution planning rule nor any resolution plan would give rise to rights of third parties and did not limit actions FHFA may take as receiver. FHFA retains all discretion conferred by statute or rule on the agency when acting as receiver for an Enterprise.

II. Discussion of Comments and Agency Response

A. Overview of Comments Received

FHFA received 14 comments on the proposed Enterprise resolution planning rule, which included comments from each Enterprise, the Mortgage Bankers Association, the American Bankers Association, the National Association of Home Builders, the Housing Policy Council, the National Association of Realtors, the Center for Responsible Lending, and the Heritage Foundation, as well as comments from five individuals including a former Chief Executive Officer of Freddie Mac. Most comments were supportive of resolution planning generally and many suggested areas where the proposed rule could be improved or clarified.

Many supportive comments expressed the view that efforts by FHFA to improve supervision of the Enterprises (as demonstrated through the recent Enterprise capital final rule, a recently proposed Enterprise liquidity rule, and this resolution planning rulemaking) did not obviate the need for housing finance reform legislation. Some comments focused considerable attention on elements for legislative reform, which are beyond the scope of FHFA rulemaking. Other commenters addressed the need for additional FHFA rulemaking in conjunction with resolution planning, such as a potential

rule on total loss absorbing capacity (TLAC), which is also beyond the scope of this rulemaking.²³

Comments received and FHFA's responses are summarized by topic below. In general, however, many commenters raised questions about FHFA's approach to support provided to the Enterprises through the PSPAs with Treasury. While most of these commenters generally supported FHFA's proposal to prohibit the Enterprises from assuming the provision or continuation of extraordinary government support, many requested clarification about what that assumption meant, in terms of how the Enterprises and the broader market *should* consider the existing PSPAs for purposes of Enterprise resolution planning. Commenters also addressed the proposed definition of "core business line" and the process for identifying CBLs; identification of impediments to rapid and orderly resolution; the benefit of a "shortcomings" category for supervisory concerns about a resolution plan that do not rise to the level of a "deficiency"; reduction of burden; and some rule processes.

B. Purpose of the Rule; "Rapid and Orderly" Resolution

Priority of Objectives. FHFA proposed to require the Enterprises to develop "credible" plans to facilitate their "rapid and orderly resolution" by FHFA as receiver, and proposed to define a "credible" plan in part as one that "plausibly achieves" the purpose of the rule.²⁴ The purpose of the rule, also set forth in the proposal, is to require each Enterprise to develop a resolution plan to facilitate its rapid and orderly resolution using FHFA's receivership authority in a manner that: (1) minimizes disruption in the national housing finance markets by providing for the continued operation of the CBLs of the Enterprise in receivership by a newly constituted LLRE; (2) preserves the value of the

²³ As noted in the preamble to the proposed rule, FHFA is considering the utility of a separate rulemaking that would require each Enterprise to maintain minimum amounts of loss-absorbing capacity such as subordinated or convertible long-term debt. *See* 86 FR at 1329, n.26.

²⁴ *See* 12 CFR 1242.1, 1242.2, and 1242.4(a)(1), 86 FR at 1342-1344.

Enterprise's franchise and assets; (3) facilitates the division of assets and liabilities between the LLRE and the receivership estate; (4) ensures that investors in mortgage-backed securities guaranteed by the Enterprises and in Enterprise unsecured debt bear losses in accordance with the priority of payments established in the Safety and Soundness Act, while minimizing unnecessary losses and costs to these investors; and (5) fosters market discipline by making clear that no extraordinary government support will be available to indemnify investors against losses or fund the resolution of an Enterprise.²⁵

One commenter observed that the five objectives of Enterprise resolution planning could potentially be competing priorities. To assist the Enterprises in the development of "credible" plans, that commenter suggested FHFA should clarify the priority of the objectives. The commenter also advocated for the flexibility to submit a resolution plan with optional strategies that reflect relative weighting of the rule's objectives, because different, reasonable, strategies could provide optionality to FHFA in any receivership scenario. If optional strategies were provided in a resolution plan, FHFA could evaluate whether the Enterprise demonstrated "that one strategy achieves such purposes *better* than the other reasonable strategies [it] analyzed."

FHFA recognizes that there is some tension among the objectives set forth in the proposed rule. After consideration, however, FHFA has determined not to prioritize among them in this rulemaking. The priority of these objectives may change over time or in a particular resolution scenario, which argues against establishing a priority structure in a rule. FHFA also believes that, as drafted, the rule provides flexibility to an Enterprise to consider, offer, and explain prioritization of objectives, tradeoffs among the objectives that the Enterprise considered in proposing a resolution strategy or other choices reflected in its plan, and even optional strategies that reflect relative weighting of

²⁵ *Id.*, 1242.1, 86 FR at 1342.

the rule's objectives. In such instances, the Enterprise's explanation would be helpful to FHFA in its understanding and review of submitted plans. More broadly, the rule permits optionality in the resolution planning process, which could result in plans that are more resilient and actionable under a range of possible circumstances.

“Rapid and Orderly” Standard. FHFA proposed to require each Enterprise to develop resolution plans to facilitate its “rapid and orderly” resolution, and proposed to define “rapid and orderly resolution” as “a process for establishing a [LLRE] as successor to the Enterprise under section 1367 of the Safety and Soundness Act (12 U.S.C 4617), including transferring Enterprise assets and liabilities to the [LLRE], such that succession by the [LLRE] can be accomplished promptly and in a manner that substantially mitigates the risk that the failure of the Enterprise would have serious adverse effects on national housing finance markets.”²⁶ One commenter remarked that, as drafted, the definition of “rapid and orderly resolution” would apply to all aspects of resolution, where “only certain . . . stages need to be conducted rapidly for an orderly resolution to occur, namely, the initial recapitalization and stabilization phase[s].” In contrast, “the claims process through a receivership will necessarily take . . . a longer period” and imposing “rapidity on these stages of the resolution would come at the expense of their orderliness, and could undermine the stability of the U.S. financial system.” Another commenter opined that “a rapid and orderly resolution is . . . unrealistic [and] FHFA should . . . work with other stakeholders, including Congress, to implement critical reforms to minimize the potential for market disruption in the event of an Enterprise's insolvency.”

FHFA agrees that conducting some stages of a resolution rapidly, or promptly, will facilitate an orderly resolution, while other stages—such as the claims process—could take longer to carry out. However, FHFA disagrees that the rule text as proposed

²⁶ See 12 CFR 1242.5(a), 86 FR at 1344.

must be changed to accommodate this distinction. As drafted, the rule definition of “rapid and orderly resolution” focuses on accomplishing succession by the LLRE promptly. More generally, FHFA intends the “rapid and orderly” standard to work in concert with the rule’s purpose and objectives. In that light, while FHFA recognizes that not all steps in a resolution process may, or should, be taken with similar speed, FHFA also believes that no step in a “rapid and orderly” resolution would involve undue delay.

C. Identification of Core Business Lines; Associated Operations and Services

Definition of “Core Business Line.” FHFA proposed to require each Enterprise to make a preliminary identification of each “core business line” and provide notice of such identification to FHFA.²⁷ For this purpose, FHFA proposed to define “core business line” as “a business line of the Enterprise that plausibly would continue to operate in a [LLRE], considering the purposes, mission, and authorized activities of the Enterprise as set forth in its authorizing statute and the Safety and Soundness Act [including] associated operations, services, functions, and supports necessary for any identified core business line to be continued.” As examples of “associated operations, services, functions, and supports,” the proposed CBL definition listed “servicing, credit enhancement, securitization support, information technology support and operations, and human resources and personnel.”²⁸

FHFA noted in the preamble to the proposed rule that the DFA section 165 and FDIC IDI resolution planning rules included the terms “critical operations” and “critical services,” respectively, which bank holding companies or insured depository institutions were required to identify in addition to their “core business lines.”²⁹ Considering the DFA section 165 rule definition of “critical operations” and the Enterprises’ statutory

²⁷ See 12 CFR 1242.3(a), 86 FR at 1343.

²⁸ See 12 CFR 1242.2, 86 FR at 1343.

²⁹ 86 FR at 1331.

purposes and mission, FHFA expressed the view that there would be alignment between the Enterprises' core business lines and their critical operations, such that there was no need to separately identify "critical operations." Likewise, considering the FDIC IDI rule definition of "critical services," FHFA reasoned that there would be alignment between such services and the "associated operations, services, functions, and supports necessary for any identified core business line to be continued," which each Enterprise is required to identify for each of its CBLs. On that basis, FHFA determined that it was not necessary to require the Enterprises to separately identify their "critical services." FHFA requested comment on its determination not to require identification of, or define, "critical operations" and "critical services."³⁰

Commenters generally agreed with FHFA's proposed approach to identification of Enterprise CBLs, noting that it is important to understand what business lines would be continued in the LLRE. One commenter called identification of CBLs "the primary benefit . . . [of Enterprise resolution planning,]" because it would provide notice of business lines that should be assumed by the LLRE to preserve a well-functioning market; and another commenter remarked that identification of CBLs would "[m]ake clear to market participants and the public what the operational capabilities of the LLRE will be and what any changes or limitations will be, compared to pre-resolution operations."

Some commenters agreed that separate identification of "critical operations" and "critical services" was not necessary and would not improve the rule. One commenter offered the opposite view that bifurcating the CBL definition "between core business lines and critical services . . . [would] allow the Enterprises to more clearly map core business lines and critical services . . . [and] show what core business lines rely on each of the critical services."

³⁰ *Id.* at 1331-1332.

Another commenter addressed the scope of the CBL definition, to the effect that associated “supports” could cover third parties and, if CBLs were intended to be continued by the LLRE, then the proposed rule could imply that the Enterprise was responsible for the continuation of the third party itself. That commenter suggested FHFA clarify that “resolution planning with respect to Third Parties would not impose obligations beyond a need to maintain resolution-friendly contracts and an ability to pay Third Parties to maintain access to critical outsourced services during resolution.” To that end, the commenter also suggested clarifying that “supports” in the CBL definition did not include “third parties” and that FHFA “include a definition of Third Parties to capture those external service providers necessary to support” CBLs.

After considering these comments, FHFA does not believe that the rule should create separate categories for “critical operations” or “critical services,” because these concepts are already covered within the CBL definition. Likewise, FHFA does not believe that “support” should be removed from the CBL definition. The description of business activities associated with execution of a CBL, in whatever manner those activities are carried out, was meant to be comprehensive, and creating segmentation in the rule – *e.g.*, removing supports provided by third parties from the CBL definition and creating a separate definition and process for “third party” identification – could undercut that comprehensive understanding.

Although FHFA is not changing the CBL definition, it should also be noted that the rule would not prevent an Enterprise, in developing its resolution plan, from characterizing some operations or services as “critical,” or from distinguishing services necessary for the continuation of a CBL in an LLRE provided by a third party from those provided by a business unit or affiliate. FHFA believes this approach – permitting the use of such categories without requiring it – creates flexibility for the Enterprises and reduces burden on the Enterprises and FHFA.

Finally, FHFA agrees that an Enterprise is not responsible for continuation in business of third parties that provide associated supports. Rather, an Enterprise resolution plan should address its strategy for ensuring the continuation of the business support that the third party provides, which is necessary to the continuation of the CBL. This may include renegotiating contracts with third-party providers to be more resolution-friendly, considering strategies for maintaining the ability to pay third parties during Enterprise resolution, and considering the ability of other parties to provide the same type of support and the feasibility of substitution.

Process for Identifying “Core Business Lines.” The proposed rule set forth a process by which the Enterprises would make a preliminary identification of their CBLs, subject to FHFA review. Thereafter, FHFA would provide notice to each Enterprise of its CBLs.³¹ The entire identification process would be completed within six months, with three months for Enterprise preliminary identification.³²

Some commenters objected to FHFA’s discretion to determine Enterprise CBLs, with one commenter remarking that it was unnecessary to have an Enterprise process for identification in light of FHFA’s discretion, and intention, to determine CBLs. Instead, that commenter suggested that FHFA should determine Enterprise CBLs in consultation with the Enterprises, and the CBLs should be the same for each Enterprise. Two commenters opined that all Enterprise charter-compliant activities should be deemed CBLs. One commenter questioned whether three months was adequate for the Enterprises to complete their preliminary review, including engagement with senior management and their respective boards of directors. One commenter expressed support for FHFA’s providing notice to each Enterprise of all CBLs identified or any removal of a CBL identification, across both Enterprises.

³¹ See 12 CFR 1242.3(a)(1) and (3) and 1242.3(b), 86 FR at 1343.

³² *Id.* 1242.3(a)(5) and (b)(1), 86 FR at 1343.

After considering these comments, FHFA is not changing the proposed process for identifying of CBLs. It is appropriate for FHFA to determine Enterprise CBLs, considering FHFA's statutory duties to ensure that the Enterprises meet their statutory purposes and that the LLRE established for an Enterprise in receivership preserves and continues the Enterprise's statutory function and mission in the housing finance market. However, given the Enterprises' greater understanding of their business operations, it is also appropriate for the Enterprises to identify associated operations, services, functions, and supports, which are included in the CBL definition.

FHFA does not agree that it should simply deem all charter-compliant activities to be CBLs. One purpose of the rule is to consider, and then identify, those Enterprise business lines that plausibly would continue to operate in an LLRE in light of the Enterprise's purposes, mission, and authorized activities. That purpose is not achieved by simply assuming that all charter-compliant activities are CBLs. While all CBLs transferred to the LLRE will be charter-compliant activities, not all charter-compliant activities may be identified as core.

At this time, FHFA is also not establishing a rule process or requirement for deeming a CBL at one Enterprise to be a CBL of the other Enterprise. While FHFA anticipates there will be substantial or even complete alignment of CBLs across the Enterprises, after additional consideration FHFA believes it would be appropriate to consider the CBLs of each Enterprise independently of the other, implementing the rule's CBL identification process, before making any decision that would require alignment.

Finally, FHFA does not propose to change the three-month time period for the Enterprises' initial preliminary identification of CBLs, because the Enterprises did not object to it. FHFA also notes that, after the Enterprises provide preliminary notices of identification to FHFA, there is an additional three-month period for FHFA to review each Enterprise's notice and follow up as appropriate. That second three-month period

and the opportunity it creates for Enterprise and FHFA collaboration provide flexibility to ensure CBLs are identified within six months after the effective date of the rule.

D. Content and Form of an Enterprise Resolution Plan

Prohibited Assumption of Extraordinary Government Support. FHFA proposed to prohibit the Enterprises, when developing their resolution plans, from assuming “the provision or continuation of extraordinary support by the United States to the Enterprise to prevent either its becoming in danger of default or in default (including, in particular, support obtained or negotiated on behalf of the Enterprise by FHFA in its capacity as supervisor, conservator, or receiver of the Enterprise, including the Senior Preferred Stock Purchase Agreements [PSPAs] entered into by FHFA and the U.S. Department of the Treasury on September 7, 2008 and any amendments thereto).”³³ This prohibition received a considerable amount of input from commenters.

Some commenters supported the proposed prohibited assumption, while others did not. Among the former, one commenter viewed it as “critical” that Enterprise resolution planning not include the support currently provided by the PSPAs. In contrast, another commenter viewed the “the denial that the [PSPAs] for the [Enterprises] exist[] and can be relied upon, and . . . the requirement that the [Enterprises] plan to continue operations in receivership without that support, despite its being necessary and integral to their business model” as “fatal flaws” that “vitate the entire rule.” A third commenter called it “impractical” to require the Enterprises to “continue operations in receivership without any government support.” Some commenters suggested FHFA reserve authority to waive provisions of the rule and offered the treatment of the PSPAs as an example of an area where FHFA could use waiver authority. Similar comments suggested FHFA expressly retain discretion in the rule, such as discretion “to permit, if FHFA deems it useful, the Enterprises to assume the continuation of the PSPAs on a transitional basis”

³³ See 12 CFR 1242.5(b)(2), 86 FR at 1344.

or, more pointedly, suggested that FHFA clarify that it “retains the discretion to allow the Enterprises to assume the continuation of any government support that is actually in place at least 12 months before each planned submission date.”

Commenters also raised questions or requested clarification about how the prohibited assumption, as related to the PSPAs, should be given effect when the Enterprises develop their resolution plans. One commenter interpreted the fact that PSPA support must be assumed away to mean that FHFA intended the Enterprises to plan for resolution after they had exited conservatorship and were well-capitalized, and asked FHFA to clarify that interpretation. Another commenter suggested that Enterprise resolution plans should reflect the Enterprise’s actual assets and obligations at the time the plan is drafted and thus, “[a]s long as . . . PSPA support continues to be available, a plan that assumes the opposite will be less useful in guiding the actual resolution.” That commenter requested FHFA clarify that “an Enterprise should not assume in its initial resolution plan a future state in which it is fully capitalized and released from conservatorship” and that, for purposes of developing a resolution strategy, “the PSPA support of the Enterprise’s existing obligations continues to apply.”

Other commenters noted that the proposed rule clearly prohibited consideration of support provided by the PSPAs but did not address how the Enterprises should, or may, consider other aspects of the PSPAs, and thus needed clarification. One commenter identified “potential . . . ambiguity regarding the scope of the assumption” and suggested that the final rule clarify that the prohibited assumption “means that the PSPAs would be assumed to have been terminated in their entirety . . . [leaving] no restrictions on the Enterprises’ freedom to raise debt or equity or transfer all or any portion of their assets without the U.S. Treasury Department’s consent, and that the senior preferred stock will have been retired at no additional cost to the Enterprises.” That commenter opined that without such clarification, PSPA restrictions could operate as impediments to the rapid

and orderly resolution of the Enterprises or to actions or steps designed to remediate other impediments. Another commenter requested FHFA to clarify that the rulemaking “does not constitute any weakening – real or perceived – of the existing PSPAs,” due to concern that the rule’s prohibited assumption could cause investors to “doubt the ongoing government support for the Enterprises and pull back from their participation in the secondary market.”

FHFA has carefully considered comments received on the proposed prohibited assumption and believes it should remain in the final rule as it was proposed, without change. One important purpose of the rule is to foster market discipline. The Enterprise charter acts make clear that they are private companies, and the Safety and Soundness Act makes no provision for funding a receivership. Statutory provisions clarify that neither the Enterprises themselves nor their securities or obligations are backed by the United States. Despite these provisions, investors, creditors, and others doing business with the Enterprises may perceive that the Enterprises have implicit United States government support. Financial support from the Treasury Department provided through the PSPAs, while explicitly limited to a finite amount of support and usable in receivership only for certain purposes, could encourage that perception.

To clarify the status of the Enterprises as privately owned corporations and to accurately reflect the provisions of the Enterprises’ charter acts and the Safety and Soundness Act, FHFA sought to make explicit in the Enterprise resolution planning rule that, in drafting their resolution plans, each Enterprise should assume that no extraordinary government support would be available to prevent it from being placed into receivership, to indemnify investors against losses, or to fund its resolution. Changing the prohibited assumption as it relates to government support provided through the PSPAs would not be consistent with the policy of fostering market discipline. In addition, the support available under the PSPAs is finite in amount and cannot be

replenished if drawn. There is no assurance that there would be any available capacity under the PSPA at the point in which an Enterprise is placed in receivership. FHFA believes it would be inconsistent with these limitations to allow the Enterprises to factor into their resolution plans – plans that are premised upon some future adverse event – any remaining PSPA support that might exist today.

Although FHFA is not changing the prohibition against assuming the provision or continuation of extraordinary government support, questions commenters raised about the treatment of other aspects of the PSPAs in Enterprise resolution planning should be addressed. The PSPAs do exist and they remain in effect. In prohibiting the Enterprises from assuming the provision of support through the PSPAs, FHFA does not intend the Enterprises to plan, today, for a future resolution that occurs after they are out of conservatorship and well-capitalized. Likewise, FHFA does not intend an Enterprise to assume that the PSPAs have been terminated in their entirety. Resolution plans that could result from either of those approaches could be conjectural and less useful to FHFA and the Enterprises, where more useful resolution plans will reflect the Enterprise's assets and obligations at the time the plan is developed.

For these reasons, while an Enterprise may not consider support provided by the PSPA in developing a resolution plan, an Enterprise may consider how other provisions of the PSPAs could impact resolution. An Enterprise may, for example, address constraints imposed by PSPA covenants, if appropriate within the context of the Enterprise's full plan. An Enterprise may also identify an aspect of or provision in a PSPA as an "impediment" to resolution or in association with an identified "material weakness" in the Enterprise's resolution plan, and such characterization would not, in itself, cause the resolution plan not to be "credible." Other comments related to the identification of impediments in a resolution plan are addressed below.

Finally, FHFA interprets comments advocating for FHFA’s reservation of discretion or express waiver authority regarding the assumption against extraordinary government support as comments calling for eliminating this assumption from the final rule. In that light, while it is appropriate to note that FHFA has retained general waiver authority in a separate rule,³⁴ and does have discretion to develop resolution planning scenarios for Enterprise consideration, FHFA does not now anticipate using its discretion or waiver authority to change such essential underpinnings of resolution planning as the prohibited assumption of the provision or continuation of extraordinary government support.

Strategic Analysis; Identification of Impediments to Rapid and Orderly Resolution. FHFA proposed to require each Enterprise resolution plan to include a strategic analysis that, among other things, would identify and describe “[a]ny potential material weaknesses or impediments to rapid and orderly resolution as conceived in the Enterprise’s plan” and “[a]ny actions or steps the Enterprise has taken or proposes to take, or which other market participants could take, to remediate or otherwise mitigate the weaknesses or impediments identified.” The Enterprises would also be required to provide a timeline for planned remedial or mitigating actions.³⁵ As FHFA noted in the preamble to the proposed rule, FHFA did not anticipate that it would identify as deficiencies those impediments that an Enterprise would be reasonably unable to address or that it would be impracticable to change.³⁶ Moreover, a resolution plan could be deemed credible even if it identified impediments to rapid and orderly resolution.³⁷

Commenters raised questions about the identification of impediments and remedial or mitigating actions. One commenter, for example, requested that FHFA

³⁴ See 12 CFR 1211.2(a).

³⁵ 12 CFR 1242.5(d)(3), 86 FR at 1345.

³⁶ 86 FR at 1338.

³⁷ *Id.*

clarify in the rule that examples of “existing impediments” listed in its comment letter “and others similarly identified in the course of preparing the early resolution plan submissions” would not be “grounds for rejecting the Enterprises’ resolution plans under FHFA’s credibility standard.” “Existing impediments” included: (1) an inability to satisfy current and future regulatory capital needs, including a projected resolution capital execution need, without relying on the PSPA or other government capital support; (2) an inability to impose losses on long-term debt without imposing them pro rata on their short-term creditors, counterparties of qualified financial contracts, and mortgage guarantee beneficiaries, given the unsubordinated nature of such long-term debt; (3) insufficient high-quality liquid assets to satisfy existing and future regulatory liquidity requirements and the projected resolution liquidity execution needs of an LLRE; and (4) PSPA restrictions on raising additional debt or equity, issuing subordinated debt, or transferring assets without U.S. Treasury consent.

FHFA believes furnishing a list of potential impediments in the rule is unnecessary to clarify that FHFA would not, solely on the basis of identifying such impediments in a resolution plan, deem the resolution plan to not be “credible.” The rule provides discretion to the Enterprises in identifying impediments. Provisions of the proposed rule on identification of impediments did not impose any requirements or constraints on the types of impediments an Enterprise could identify within a “credible” resolution plan. To the extent that “existing impediments” listed by the commenter could relate to or implicate provisions of the PSPAs, FHFA has expressly affirmed that such provisions could be identified as impediments in a resolution plan and would not cause the plan not to be “credible,” if appropriate in the context of the specific resolution plan.

One commenter requested that FHFA clarify that identification of impediments to rapid and orderly resolution in a resolution plan would not cause that plan not to be credible, *if* the Enterprise also identified actions that could be taken to remediate the

impediment, explained why such actions are feasible and who is responsible for taking them, and provided a timeline for completing remedial actions the Enterprise planned to take. Three important result of resolution planning will be the identification of impediments, actions that can be taken to remediate them, and timelines for taking planned remedial actions. Taking such actions should improve the resolvability of the Enterprise in a manner that furthers the objectives of the rule. On the other hand, FHFA is not prepared to say that it will always be necessary to have a corresponding remedial action in order for identification of an impediment not to cause a plan to be not credible. Stated another way, FHFA does not believe that identification of an impediment without identifying a remedial action would always cause a plan not to be credible. If FHFA's view changes after gaining experience with Enterprise resolution planning, FHFA will consider whether the rule should be clarified as the commenter suggested.

In general, FHFA anticipates that, where an Enterprise can act to remediate an impediment, the Enterprise's resolution plan may provide relatively more specificity about planned remedial actions and timing for taking them. Where remediating an impediment may require action by others, less within the control of an Enterprise, relatively less detail may be appropriate and less detail would not, in itself, cause the plan not to be credible.

FHFA Identification of a Resolution Strategy. FHFA did not suggest or establish any resolution strategy in the proposed rule. Instead, the proposed rule reflected provisions of the Safety and Soundness Act that require FHFA, as receiver for an Enterprise, to establish an LLRE that “by operation of law and immediately upon its organization . . . succeed[s] to the charter of the [Enterprise] and thereafter operate[s] in accordance with, and subject to, such charter, [the Safety and Soundness Act], and any other provision of law to which the [Enterprise] is subject” except as otherwise provided

in the Safety and Soundness Act.³⁸ One commenter suggested that FHFA establish “a preferred resolution strategy or strategies to guide FHFA’s actions in resolution and receivership . . . [to] provide clarity to the Enterprises, the market, and the public.” That commenter also asked FHFA to confirm certain resolution “mechanics:” that the LLRE will be created at the outset of the receivership process; that the LLRE will be permitted to raise capital and debt financing; and that “FHFA will proactively assist in identifying business areas that can be sold to an acquirer.”

After consideration, FHFA has not set forth a preferred resolution strategy in the rule. FHFA has refrained from doing so, in part, to encourage the Enterprises to consider any reasonable approaches to resolution, rather than preemptively focusing their efforts on a single resolution strategy that may not be appropriate to an Enterprise’s particular circumstances. In addition, FHFA believes that the iterative process of reviewing the Enterprises’ resolution plans could reveal benefits from one strategy over another, or demonstrate that one strategy is preferable to others in certain circumstances. In the future, if FHFA develops a preferred resolution strategy, FHFA may amend the resolution planning rule if FHFA determines it would be appropriate to include such a strategy.

FHFA also does not believe it is necessary to include the described “mechanics” in a resolution planning rule. In general, however, FHFA observes that, because the purpose of the LLRE is to continue CBLs of the Enterprise, it would be important to establish the LLRE at the outset of the receivership process. How an Enterprise’s CBLs as continued in the LLRE would be funded is an issue each Enterprise is required to

³⁸ 12 U.S.C. 4617(i)(2)(A); *see also* 12 CFR 1242.1(a)(1) and 1242.2, 86 FR at 1342-1343, requiring Enterprise plans for their “rapid and orderly resolution” by FHFA as receiver and defining “rapid and orderly resolution” as a process for establishing a limited-life regulated entity as successor to the Enterprise under section 1367 of the Safety and Soundness Act (12 U.S.C. 4617), including transferring Enterprise assets and liabilities to the limited-life regulated entity, such that succession by the limited-life regulated entity can be accomplished promptly and in a manner that substantially mitigates the risk that the failure of the Enterprise would have serious adverse effects on national housing finance markets.

address in its resolution plan, and identification of business areas that could be sold to an acquirer will emerge through an understanding of areas that are *not* CBLs.

Development of a Plan Template; Reduction of Burden. One commenter recommended that, in the future, FHFA provide “a template for completing a resolution plan in accordance with the regulatory requirements” as the FRB and FDIC have done for companies subject to the DFA section 165 rule. Having such a template would “allow the Enterprises to more clearly understand plan requirements,” “facilitate FHFA’s review of submitted plans,” and “minimize differences in the Enterprises’ plans attributable to choices related to style and presentation.”

While FHFA agrees that a template for Enterprise resolution plans could provide consistency, FHFA believes it will be better able to assess the benefit of or need for a template, as well as its form, after gaining experience with reviewing Enterprise resolution plans. FHFA also believes that such a template could be provided through guidance in the future, without the need for an amendment to the resolution planning rule. For those reasons, FHFA is not establishing a template at this time.

Some commenters identified areas where changes to the form or content of resolution plans would make developing them less burdensome and possibly provide more relevant information to FHFA. One commenter suggested adding a “materiality” qualifier to rule requirements that the Enterprises list “all affiliates and trusts within the Enterprise’s organization;” identify “third-party providers with which the Enterprise has significant business connections;” and analyze “whether the failure of a third-party provider [to an Enterprise] would likely have an adverse impact on the Enterprise” (*e.g.*, list “material affiliates and trusts;” identify “material third-party providers;” and require analysis of third-party failures likely to have a “material” adverse impact).³⁹ One commenter noted that the proposed rule permitted an Enterprise to incorporate by

³⁹ See 12 CFR 1242.5(f)(1), (11), and (14); 86 FR at 1345-1346.

reference material from an earlier resolution plan into a later plan, and suggested permitting the Enterprises to incorporate “information that is otherwise available to FHFA through existing supervisory mechanisms . . . such as the Enterprise Regulatory Capital Framework reports.” Finally, a commenter suggested that FHFA consider allowing the Enterprises to develop “targeted plans,” similar to those described in the DFA section 165 rule, “to increase efficiency.”

FHFA does not believe it has sufficient information at this time to add a materiality qualifier to information elements required from an Enterprise by the resolution planning rule, while still ensuring that FHFA receives sufficient information to understand and assess an Enterprise resolution plan (for example, how FHFA could quickly preserve and divide assets between the LLRE and the receivership estate). Likewise, FHFA is not inclined to expand the types of information that could be incorporated by reference at this time, due to concerns that a large amount of information incorporated by reference could make it harder to review, understand, and assess a resolution plan.

FHFA agrees that development of a resolution plan should not impose undue burden on an Enterprise or FHFA, however. To that end, FHFA is adding to the final rule a reservation of authority that will permit FHFA to tailor or adjust the scope or form of information required from the Enterprises, considering the significance of such information to FHFA when reviewing resolution plans, the appropriate level of detail of information, and reduction of burden on an Enterprise or FHFA. That provision will permit FHFA to tailor the scope of information requirements (including, for example, adding a “materiality” qualifier in the future), and to tailor the form of information required (including expanding the sources of information that can be incorporated by

reference into a resolution plan).⁴⁰ Because this authority is reserved in the final rule, FHFA could provide guidance to the Enterprises making non-substantive adjustments to the scope and form of information required from them, without amending the final rule.⁴¹

Submission of targeted plans is a slightly different issue. Requiring targeted plans instead of full resolution plans in some cycles could be viewed as tailoring or adjusting the scope or form of information required from an Enterprise, and would reduce burden, and on that basis FHFA could address targeted plans through its reservation of authority. But FHFA is also aware that such plans are provided for in the DFA section 165 rule itself. FHFA has consciously worked to incorporate in the Enterprise resolution planning rule concepts that are similar to those addressed in the DFA section 165, to inform the public and other stakeholders of, and affirm, similarities in approach and process. Because the DFA section 165 rule includes a provision for targeted plans, it may be appropriate for FHFA to include such a provision in the Enterprise resolution planning rule, as well. FHFA will continue to consider the benefits provided by targeted plans, whether such plans would be appropriate for the Enterprises, and if so, whether it would be appropriate to provide for targeted plans through a rule amendment or through use of reserved authority to tailor the scope and form of information required in Enterprise resolution plans.

Content of the Plan's Public Section. As proposed, the rule would require the Enterprises to divide their resolution plans into a public section and a confidential section, with the two sections segregated and separately identified.⁴² The proposal also listed required content of the public section, modeled on the DFA section 165 rule but

⁴⁰ To better understand the types and sources of information an Enterprise may wish to incorporate by reference, FHFA invites the Enterprises to identify information in their resolution plans that they would have incorporated by reference but for the limited authority to do so, and the source that would have been referenced.

⁴¹ Substantive changes to the rule would be made in compliance with the Administrative Procedure Act, 5 U.S.C. 553.

⁴² See 12 CFR 1242.6(a)(1), 86 FR at 1346.

tailored for the Enterprises' resolution plans.⁴³ FHFA intends the public section to make clear the assumptions pursuant to which the Enterprise drafted its resolution plan, including the assumption that no government support will be available to prevent the failure of an Enterprise or to fund its resolution, and to indicate the extent to which potential claims by creditors and counterparties against the Enterprise might be satisfied in a resolution, and priority of those claims. By providing the public with greater transparency about the satisfaction of potential claims and the manner in which those claims might be satisfied, FHFA believes publishing the public section of each Enterprise's resolution plan will foster market discipline by making clear to investors in Enterprise-guaranteed MBS and Enterprise debt that they should no longer rely on an implicit government guarantee and should price the risk of these investments accordingly.

Commenters were supportive of a public section but had differing views on its appropriate scope. One commenter, for example, suggested that the rule "should provide a more extensive public section of the [Enterprises'] resolution plans than the large-bank resolution planning process produces." In addition, FHFA should require "public notice of material changes to [Enterprise] operations, corporate structures, capabilities, etc. that result or will result from their resolution planning." In contrast, another commenter remarked that the scope of the public section should "be relatively limited in order to allow more candid disclosure and discussion in the comprehensive confidential section of a resolution plan." That commenter also requested FHFA clarify that information on specific service providers or counterparties would not be shared in the public section, as public disclosure of key third-party relationships could impact Enterprise commercial relationships.

FHFA does not plan to change the scope of the public section of an Enterprise resolution plan at this time, and is not requiring additional public notice of material

⁴³ *Id.*, 1242.6(a)(2).

changes to Enterprise operations, organization, or capability that result or could result from resolution planning. FHFA expects to work with the Enterprises when developing their initial public sections, to ensure appropriate information, with an appropriate level of detail, is made available to the public, while balancing the need for candor and to preserve confidentiality of some information. Regarding public identification of key third-party relationships specifically, FHFA notes that the rule does not require these to be disclosed.

E. Timing of Plan Submission; Interim Updates

FHFA proposed to require the Enterprises to submit their initial resolution plans roughly two years after the effective date of the final rule, and to require resolution plans to be submitted every two years thereafter.⁴⁴ FHFA also retained authority to require submission on a date different from that established though the rule, in part to avoid requiring resolution plans to be submitted in the fourth quarter, due to other end-of-year reporting obligations, if, based on the date of finalizing the rule, resolutions plans would otherwise be due then.⁴⁵

Commenters generally supported the flexibility provided by FHFA's reservation of authority to adjust submission dates. One commenter noted that the DFA section 165(d) rule provides similar flexibility but requires the FRB and FDIC to provide notice of an adjusted submission date at least 12 months in advance of the new due date.⁴⁶ That commenter suggested FHFA add a similar timing-of-notice provision to its rule. FHFA agrees that notice of an adjusted submission date should be provided reasonably in advance of the adjusted date, and adding such a notice requirement to the rule would make it more transparent. Thus, FHFA has added a rule requirement that it provide the Enterprises with 12 months' notice in advance of the new submission date.

⁴⁴ See 12 CFR 1242.4(a)(1), 86 FR at 1344.

⁴⁵ 12 CFR 1242.4(a)(2), 86 FR at 1344.

⁴⁶ Cf. 12 CFR 243.4(d)(2).

FHFA also proposed to require the Enterprises to submit interim updates to resolution plans “within a reasonable time, as determined by FHFA.”⁴⁷ One commenter suggested FHFA provide a specific time period, such as six months, for an Enterprise to respond to any request for an interim update.

Although FHFA agrees that the Enterprises should be provided a reasonable period to prepare interim updates, FHFA does not believe the rule should state a period because what is a “reasonable” timeframe for preparation will necessarily depend upon the scope of the update requested. FHFA expects to engage with an Enterprise subject to an interim update request on a reasonable period for preparing the update, prior to establishing a submission date.

F. FHFA Identification of Deficiencies and Shortcomings

FHFA proposed to identify and provide notice to an Enterprise of any “deficiencies” in its resolution plan, which the Enterprise would then be required to address in a revised resolution plan.⁴⁸ FHFA noted that the DFA section 165 rule also includes “shortcomings” as a second, lesser, category for identified supervisory concerns, and asked if that category should be included in FHFA’s rule.⁴⁹ In the DFA section 165 rule, identification of a “shortcoming” does not trigger the need to submit a revised plan, but companies are expected to address shortcomings in their next resolution plans, and a shortcoming that is not addressed may be identified as a deficiency in a later plan.

One commenter responded that a rule category for “shortcomings” could “reduce potential ambiguity regarding the level of Enterprise action necessary to respond.” If “shortcomings” are addressed in the rule, then a concern categorized as a “shortcoming” may receive more Enterprise resources (funding and staff time) to remediate, which could be helpful to Enterprise efforts to prioritize and focus appropriate attention.

⁴⁷ 12 CFR 1242.4(a)(3), 86 FR at 1344.

⁴⁸ See 12 CFR 1242.7(b), 86 FR at 1347.

⁴⁹ See 86 FR at 1338.

FHFA found the response related to the potential value of a “shortcomings” category persuasive and so has added it to the final rule, along with a definition of “shortcoming” that is modeled on the definition of “shortcoming” in the DFA section 165 rule. Also in line with that rule, FHFA has included provisions to the effect that an unaddressed shortcoming may become a deficiency, and that it is not necessary for FHFA to identify an aspect of a plan as a shortcoming in order to identify it as a deficiency in a later plan.

G. Timing of FHFA Feedback; Provision of Formal Guidance

FHFA proposed to provide feedback to the Enterprises within one year after receiving complete resolution plans.⁵⁰ One commenter requested that FHFA commit to providing feedback not less than 12 months before the filing date of the next plan and to providing the Enterprises “with more than half of the total plan cycle time to respond.”

FHFA intends to provide timely feedback to the Enterprises on their resolution plans and established a benchmark of not later than one year after plans have been submitted in the proposed rule. FHFA proposed to require the Enterprises to provide revised resolution plans addressing any deficiency identified by FHFA within 90 days of receiving notice of deficiency from FHFA. Other matters of concern, including identified shortcomings, may not require half of the total plan cycle for response, and committing to that timing in the final rule would likely result in the submission and review cycle longer than the biennial cycle FHFA desires. For these reasons, FHFA has not amended the rule text on timing of FHFA feedback or Enterprise responses.

Apart from feedback provided directly to an Enterprise on a specific resolution plan, commenters also addressed more general FHFA guidance on resolution planning. Commenters approved FHFA’s view, stated in the preamble to the proposed rule, that resolution planning was an iterative process that would include guidance to the

⁵⁰ See 12 CFR 1242.7(b)(1)(iii), 86 FR at 1347.

Enterprises.⁵¹ One commenter encouraged FHFA to consider providing public notice of and soliciting comment on formal guidance, similar to the process the FDIC and FRB have undertaken with guidance on the DFA section 165 rule, “to engage the public and obtain input from interested stakeholders and to promote transparency in the resolution planning process.” FHFA sees the potential value of a public notice and comment process for formal guidance and will consider the appropriate process for developing guidance, including public engagement, in the future. No change to the rule is necessary in order for FHFA to develop an appropriate process for providing guidance to the Enterprises.

H. Comments Beyond the Scope of the Rule

Several commenters addressed subjects that were beyond the scope of the proposed rule. These included comments on the need for a separate FHFA rulemaking requiring or permitting the Enterprises to issue long-term subordinated debt, commonly known as “total loss absorbing capacity” or TLAC, as a means of facilitating the rapid and orderly resolution of an Enterprise. In the proposed rule, FHFA acknowledged that if a TLAC requirement were to be imposed on the Enterprises, such a requirement would be the subject of a separate rulemaking.⁵²

Another commenter, generally opposed to Enterprise resolution planning, opined that instead of resolution planning FHFA should prioritize strengthening the Enterprises’ affordable housing goals. Enterprise housing goals are beyond the scope of the proposed rule.

Other commenters addressed subjects that are beyond FHFA’s authority, even if they related to Enterprise resolution planning. For example, several commenters remarked on the continuing need for housing finance reform, with one commenter

⁵¹ See 86 FR at 1330, 1331, and 1339.

⁵² See 86 FR at 1329, n. 26.

expressing the view that the possibility of the market disruption that would result if either Enterprise were placed in receivership, regardless of how much resolution planning had taken place, simply underscored the need for comprehensive housing finance system reform legislation. Other commenters stated, or implied, that issues or concerns they identified as related to the proposed rule were actually the result of current statutory requirements. One commenter noted that while FHFA's proposal would carry out the law as written, trying to resolve an Enterprise in the manner required by current law would risk systemic disruption.

Another commenter suggested that the Financial Stability Oversight Council should designate the Enterprises as Systemically Important Financial Market Utilities (SIFMUs) pursuant to title VIII of the Dodd-Frank Act, and after that, FHFA should "reevaluate the statutory basis for oversight of the [Enterprises] in light of [DFA] section 804 and the benefits of SIFMU status." That commenter did not elaborate on how such a designation would enhance the financial stability, resiliency, or resolvability of the Enterprises. Similar to housing finance reform, designation of the Enterprises as SIFMUs is outside of FHFA's authority.

Because these comments did not address the text of the proposed rule or subjects within the scope of the proposed rule, FHFA did not consider them in promulgating the final rule.

III. Summary of Changes to the Final Rule

A. Section 1242.4(a)(2), Altering Submission Dates

In response to comments, FHFA has added a provision requiring FHFA, when altering a submission date, to provide an Enterprise notice of the altered date at least 12 months before the submission is due to FHFA. This change will ensure the Enterprises have adequate time to prepare resolution plans and aligns this aspect of FHFA's resolution planning rule with a similar provision in the DFA section 165 rule.

B. Section 1242.5(a), Reservation of Authority to Tailor Submission Requirements

In response to comments, FHFA has added a limited reservation of authority to tailor rule requirements on the required form or content of resolution plans, to reduce burden on the Enterprises or FHFA. With this authority FHFA could make non-substantive changes to Enterprise resolution plan form and content requirements without amending the rule itself, which would enhance the efficiency of FHFA's response to rule-imposed burdens.

C. Section 1242.7(b), Addition of a "Shortcomings" Category

In response to comments, FHFA has added a category of "shortcomings" for supervisory concerns identified when reviewing Enterprise resolution plans that do not rise to the level of "deficiencies," but that should be addressed in the Enterprise's next resolution plan. While this rule change was not necessary to permit categorization of supervisory concerns or the supervisory requirement that such concerns be addressed, a rule category for "shortcomings" could assist an Enterprise when determining the priority and resources appropriate for its follow-up actions. In addition, these provisions align FHFA's resolution planning rule with the DFA section 165 rule.

IV. Regulatory Analyses

A. Paperwork Reduction Act

The final rule does not contain any information collection requirement that would require the approval of the Office of Management and Budget (OMB) under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). Therefore, FHFA has not submitted any information to OMB for review.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires that a regulation that has a significant economic impact on a substantial number of small entities must

include an analysis describing the regulation's impact on small entities. Such an analysis need not be undertaken if the agency has certified that the regulation will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b). FHFA has considered the impact of the final rule under the Regulatory Flexibility Act. The General Counsel of FHFA certifies that this final rule will not have a significant economic impact on a substantial number of small entities because the regulation applies only to the Enterprises, which are not small entities for purposes of the Regulatory Flexibility Act.

C. Congressional Review Act

In accordance with the Congressional Review Act (5 U.S.C. 801 *et seq.*), FHFA has determined that this final rule is a major rule and has verified this determination with the Office of Information and Regulatory Affairs of the Office of Management and Budget.

List of Subjects in 12 CFR Part 1242

Administrative practice and procedure, Government-sponsored enterprises, Reporting and record keeping requirements, Securitizations.

Authority and Issuance

For the reasons stated in the preamble, under the authority of 12 U.S.C. 4511, 4513, and 4526, FHFA amends chapter XII of title 12 of the Code of Federal Regulations by adding new part 1242 to subchapter C to read as follows:

CHAPTER XII—Federal Housing Finance Agency

SUBCHAPTER C—Enterprises

PART 1242—RESOLUTION PLANNING

Sec.

1242.1 Purpose; identification as a prudential standard.

1242.2 Definitions.

1242.3 Identification of core business lines.

1242.4 Credible resolution plan required; other notices to FHFA.

1242.5 Informational content of a resolution plan; required and prohibited assumptions.

1242.6 Form of resolution plan; confidentiality.

1242.7 Review of resolution plans; resubmission of deficient resolution plans.

1242.8 No limiting effect or private right of action.

Authority: 12 U.S.C. 4511; 12 U.S.C. 4513; 12 U.S.C. 4513b; 12 U.S.C. 4514;

12 U.S.C. 4517; 12 U.S.C. 4526; and 12 U.S.C. 4617.

§ 1242.1 Purpose; identification as a prudential standard.

(a) *Purpose.* The purpose of this part is to require each Enterprise to develop a plan for submission to FHFA that would assist FHFA in planning for the rapid and orderly resolution of an Enterprise using FHFA's receivership authority at 12 U.S.C. 4617, in a manner that:

(1) Minimizes disruption in the national housing finance markets by providing for the continued operation of the core business lines of an Enterprise in receivership by a newly constituted limited-life regulated entity;

(2) Preserves the value of an Enterprise's franchise and assets;

(3) Facilitates the division of assets and liabilities between the limited-life regulated entity and the receivership estate;

(4) Ensures that investors in mortgage-backed securities guaranteed by the Enterprises and in Enterprise unsecured debt bear losses in accordance with the priority of payments established in the Safety and Soundness Act while minimizing unnecessary losses and costs to these investors; and

(5) Fosters market discipline by making clear that no extraordinary government support will be available to indemnify investors against losses or fund the resolution of an Enterprise.

(b) *Identification as a prudential standard; effect of identification.* This part is a prudential standard pursuant to section 1313B of the Safety and Soundness Act, 12 U.S.C. 4513b, and is subject to 12 CFR part 1236. In its discretion, FHFA may deem:

(1) The determination of a deficiency in a resolution plan; or

(2) The failure to undertake actions or changes identified by FHFA in the notice provided pursuant to § 1242.7(b)(1), to be a failure to meet a standard for purposes of § 1236.4 of this chapter. In its discretion, FHFA may also deem a revised, resubmitted resolution plan to be a corrective plan for purposes of § 1236.4 of this chapter.

§ 1242.2 Definitions.

Unless otherwise indicated, terms used in this part have the meanings that they have in 12 CFR part 1201 and in the Federal Housing Enterprises Financial Safety and Soundness Act (12 U.S.C. 4501 *et seq.*).

Core business line means a business line of the Enterprise that plausibly would continue to operate in a limited-life regulated entity, considering the purposes, mission, and authorized activities of the Enterprise as set forth in its authorizing statute and the Safety and Soundness Act. *Core business line* includes associated operations, services, functions, and supports necessary for any identified core business line to be continued, such as servicing, credit enhancement, securitization support, information technology support and operations, and human resources and personnel.

Credible, with regard to a resolution plan, means a resolution plan that:

(1) Demonstrates consideration of required and prohibited assumptions set forth at § 1242.5(b);

(2) Provides strategic analysis and detailed information as required by § 1242.5(c) through (g) that is well-founded and based on information and data related to the Enterprise that are observable or otherwise verifiable and employ reasonable projections from current and historical conditions within the broader financial markets; and

(3) Plausibly achieves the purposes of § 1242.1(a).

Material change means an event, occurrence, change in conditions or circumstances, or other change that results in, or could reasonably be foreseen to have, a material effect on:

- (1) The resolvability of the Enterprise;
- (2) The Enterprise's resolution strategy; or
- (3) How the Enterprise's resolution plan is implemented. Material changes may include the identification of a new core business line or significant increases or decreases in business, operations, funding, or interconnections.

Rapid and orderly resolution means a process for establishing a limited-life regulated entity as successor to the Enterprise under section 1367 of the Safety and Soundness Act (12 U.S.C 4617), including transferring Enterprise assets and liabilities to the limited-life regulated entity, such that succession by the limited-life regulated entity can be accomplished promptly and in a manner that substantially mitigates the risk that the failure of the Enterprise would have serious adverse effects on national housing finance markets.

§ 1242.3 Identification of core business lines.

(a) *Enterprise preliminary identification; notice to FHFA; timing.* (1) Each Enterprise shall conduct periodic reviews of its business lines to identify core business lines, consistent with the requirements of paragraph (a)(2) of this section.

(2) Each Enterprise shall establish and implement a process to identify each of its core business lines. The process shall include a methodology for evaluating the Enterprise's participation in activities and markets that may be critical to the stability of the national housing finance markets or carrying out the statutory mission and purpose of the Enterprise. The methodology shall be designed, taking into account the nature, size, complexity, and scope of the Enterprise's operations, to identify and assess:

- (i) The markets and activities in which the Enterprise participates or has operations;

(ii) The significance of those markets and activities with respect to the national housing finance markets or the Enterprise's obligation to carry out its statutory mission and purpose; and

(iii) The significance of the Enterprise as a provider or other participant in those markets and activities.

(3) Enterprise identification of any business line as a core business line is preliminary and is subject to review by FHFA. Each Enterprise must provide a notice of its preliminary identification of core business lines to FHFA, including a description of its methodology and the basis for identification of each core business line.

(4) The board of directors of the Enterprise shall approve each notice of preliminary identification of core business lines before submission to FHFA, with such approval noted in board minutes.

(5) Each Enterprise must conduct its initial identification process and submit its initial identification of core business lines to FHFA by the date that is three months after the effective date of the final rule. Thereafter, each Enterprise shall conduct periodic identification processes, determining the timing of each periodic process to ensure that the process for identification, including FHFA review and determination required by paragraph (b) of this section, can be complete in sufficient time for each succeeding required resolution plan to include the information required under § 1242.5 for each core business line. FHFA may also direct an Enterprise as to the timeframe for conducting any subsequent identification process.

(6) Each Enterprise must periodically review its identification process and update it as necessary to ensure its continued effectiveness.

(b) FHFA identification of core business lines; notice to an Enterprise; timing of inclusion in resolution plan. (1) Within three months of receiving an Enterprise notice of the preliminary identification of a business line as a core business line, FHFA will

provide notice to the Enterprise of its determination of each core business line. FHFA may also identify operations, services, functions, or supports associated with any core business line.

(2) FHFA may identify any business line of the Enterprise as a core business line, considering factors set forth in paragraph (a)(2) of this section or any other factor FHFA deems appropriate, following review of an Enterprise notice of preliminary identification or at any other time, on written notice to an Enterprise.

(3) If FHFA identifies a core business line under paragraph (b)(2) of this section, an Enterprise is not required to include that core business line in a resolution plan if that plan is due within six months after the Enterprise receives notice of identification from FHFA.

(c) Reconsideration of business line identification—(1) Reconsideration initiated by an Enterprise. (i) An Enterprise may request that FHFA reconsider the identification under paragraph (a) or (b) of this section, by submitting a written request to FHFA that includes a clear and complete statement of all arguments and all material information that the Enterprise believes is relevant to reconsideration as a core business line.

(ii) The board of directors of the Enterprise shall approve each request for reconsideration of identification before submission to FHFA, with such approval noted in board minutes.

(iii) FHFA will respond to an Enterprise request for reconsideration within three months after the date on which a complete request is received.

(2) Reconsideration initiated by FHFA. FHFA may reconsider the identification of any business line, including reconsideration of any operation, service, function, or support, at any time and in its discretion, on written notice to an Enterprise.

(3) FHFA notice of reconsideration. FHFA will provide a notice of reconsideration to the affected Enterprise, stating the results of the reconsideration. If

FHFA determines to change an identification, such notice may also provide an effective date or other delaying or triggering condition for the change to become effective.

(4) *Effect of reconsideration.* For purposes of Enterprise resolution plans, identification as a core business line continues in effect until any notice of reconsideration removing such identification becomes effective.

§ 1242.4 Credible resolution plan required; other notices to FHFA.

(a) *Credible resolution plan required; frequency and timing of plan submission—*

(1) *Credible resolution plan required; resolution plan submission dates.* Each Enterprise is required to submit a credible resolution plan to FHFA in accordance with frequency and timing requirements established by FHFA. Each Enterprise is required to submit its initial resolution plan 18 months after the date on which it is required to submit its initial notice preliminarily identifying core business lines to FHFA in accordance with § 1242.3(a)(2). Thereafter, each Enterprise shall submit a resolution plan to FHFA not later than two years following the submission date for the prior resolution plan, unless otherwise notified by FHFA in accordance with paragraph (a)(2) of this section.

(2) *Altering submission dates.* Notwithstanding anything to the contrary in this part, FHFA may determine that an Enterprise shall submit its resolution plan on a date different from any date provided in paragraph (a)(1) of this section, which may be before or after any date so established. FHFA shall provide an Enterprise with written notice of a determination under this paragraph (a)(2) no later than 12 months before the date by which the Enterprise is required to submit the resolution plan.

(3) *Interim updates.* FHFA may require that an Enterprise submit an update to a resolution plan submitted under this part, within a reasonable time, as determined by FHFA. FHFA shall notify the Enterprise of its requirement to submit an update under this paragraph (a)(3) in writing and shall specify the portions or aspects of the resolution plan the Enterprise shall update. Submission of an interim update does not affect the date

for submission of a resolution plan, unless otherwise notified by FHFA in accordance with paragraph (a)(2) of this section.

(b) *Notice of extraordinary events; inclusion in next resolution plan.* Each Enterprise shall provide FHFA with a notice no later than 45 days after any material change, merger, reorganization, sale or divestiture of a business unit or material assets, or similar transaction, or any fundamental change to the Enterprise's resolution strategy. Such notice must describe such extraordinary event and explain how it may plausibly affect the resolution of the Enterprise. The Enterprise shall address any such extraordinary event with respect to which it has provided notice pursuant to this paragraph (b) in the next resolution plan submitted by the Enterprise, provided that plan is required to be submitted more than 90 days after submission of the notice of an extraordinary event to FHFA.

(c) *Board of directors' approval of resolution plan.* The board of directors of the Enterprise shall approve each resolution plan (including any revised resolution plan) before submission to FHFA, with such approval noted in board minutes.

(d) *Point of contact.* Each Enterprise shall identify an Enterprise senior management official and position responsible for serving as a point of contact regarding the resolution plan.

(e) *Incorporation of previously submitted resolution plan information by reference.* Any resolution plan submitted by an Enterprise may incorporate by reference information from a prior resolution plan submitted to FHFA, provided that:

(1) The resolution plan seeking to incorporate information by reference clearly indicates:

(i) The information the Enterprise is incorporating by reference; and

(ii) Which of the Enterprise's previously submitted resolution plan(s) originally contained the information the Enterprise is incorporating by reference, including the specific location of that information in the previously submitted resolution plan; and

(2) The information the Enterprise is incorporating by reference remains accurate in all respects that are material to the Enterprise's resolution plan.

(f) *Extensions of time.* Upon its own initiative or a written request by an Enterprise, FHFA may extend any time period under this part. Each extension request by an Enterprise shall be supported by a written statement describing the basis and justification for the request.

§ 1242.5 Informational content of a resolution plan; required and prohibited assumptions.

(a) *In general.* An Enterprise resolution plan shall reflect required and prohibited assumptions specified in paragraph (b) of this section and include information specified in paragraphs (c) through (h) of this section, as well as analysis, in detail, to facilitate a rapid and orderly resolution of the Enterprise by FHFA as receiver in a manner that minimizes the risk that resolution of an Enterprise would have serious adverse effects on the national housing finance markets, and to the extent possible, the amount of any losses to be realized by the Enterprise's creditors. Notwithstanding anything to the contrary in this part, FHFA may adjust or tailor the scope or form of information specified in paragraphs (c) through (g) of this section, as FHFA determines appropriate considering the significance of such information to FHFA when reviewing resolution plans, the appropriate level of detail of information, and reduction of burden on an Enterprise or FHFA.

(b) *Required and prohibited assumptions when developing a resolution plan.* In developing a resolution plan, each Enterprise shall:

(1) Take into account that receivership of the Enterprise may occur under the severely adverse economic conditions provided to the Enterprise by FHFA in conjunction with any stress testing required or in another scenario provided by FHFA;

(2) Not assume the provision or continuation of extraordinary support by the United States to the Enterprise to prevent either its becoming in danger of default or in default (including, in particular, support obtained or negotiated on behalf of the Enterprise by FHFA in its capacity as supervisor, conservator, or receiver of the Enterprise, including the Senior Preferred Stock Purchase Agreements entered into by FHFA and the U.S. Department of the Treasury on September 7, 2008 and any amendments thereto); and

(3) Reflect statutory provisions that obligations and securities of the Enterprise issued pursuant to its authorizing statute, together with interest thereon, are not guaranteed by the United States and do not constitute a debt or obligation of the United States or any agency or instrumentality thereof other than the Enterprise.

(c) *Executive summary.* Each resolution plan of an Enterprise shall include an executive summary describing:

(1) Summary of the key elements of the Enterprise's strategic analysis;

(2) A description of each material change experienced by the Enterprise since submission of the Enterprise's prior resolution plan (or affirmation that no such change has occurred);

(3) Changes to the Enterprise's previously submitted resolution plan resulting from any:

(i) Change in law or regulation;

(ii) Guidance or feedback from FHFA; or

(iii) Material change described pursuant to paragraph (c)(2) of this section; and

(4) Any actions taken by the Enterprise since submitting its prior resolution plan to improve the effectiveness of the resolution plan or remediate or otherwise mitigate any material weaknesses or impediments to a rapid and orderly resolution.

(d) *Strategic analysis.* Each resolution plan shall include a strategic analysis describing the Enterprise's plan for facilitating its rapid and orderly resolution by FHFA. Such analysis shall:

(1) Include detailed descriptions of—

(i) Key assumptions and supporting analysis underlying the resolution plan, including any assumptions made concerning the economic or financial conditions that would be present at the time resolution would occur;

(ii) Actions, or ranges of actions, which if taken by the Enterprise could facilitate a rapid and orderly resolution and those actions that the Enterprise intends to take;

(iii) The corporate governance framework that supports determination of the specific actions to be taken to facilitate a rapid and orderly resolution as the Enterprise is becoming in danger of default (including identifying the senior management officials responsible for making those determinations and taking those actions);

(iv) Funding, liquidity, and capital needs of, and resources and loss absorbing capacity available to, the Enterprise, which shall be mapped to its core business lines, in the ordinary course of business and in the event the Enterprise becomes in danger of default or in default;

(v) Considering the Enterprise's core business lines, a strategy for identifying assets and liabilities of the Enterprise to be transferred to a limited-life regulated entity; and for transferring operations of, and funding for, the Enterprise to a limited-life regulated entity, which shall be mapped to core business lines;

(vi) A strategy for preventing the failure or discontinuation of each core business line and its associated operations, services, functions, or supports as the core business line

is transferred to a limited-life regulated entity, and actions that, in the Enterprise's view, FHFA could take to prevent or mitigate any adverse effects of such failure or discontinuation on the national housing finance markets;

(vii) A strategy for mitigating the effect on the Enterprise of another Enterprise becoming in danger of default or in default, on the continuation of each of the Enterprise's core business lines and its associated operations, services, functions, or supports as any assets or operations of the other Enterprise are transferred to the Enterprise;

(viii) The extent to which claims against the Enterprise by creditors and counterparties would be satisfied in accordance with § 1237.9 of this chapter and the manner and source of satisfaction of those claims consistent with the continuation of the Enterprise's core business lines by the limited-life regulated entity; and

(ix) A strategy for transferring or unwinding qualified financial contracts, as defined at 12 U.S.C. 4617(d)(8)(D)(i), in a manner consistent with 12 U.S.C. 4617(d)(8) through (11);

(2) Identify the time period(s) the Enterprise expects would be needed to successfully execute each action identified in paragraph (d)(1)(ii) of this section to facilitate rapid and orderly resolution, and any impediments to such actions;

(3) Identify and describe—

(i) Any potential material weaknesses or impediments to rapid and orderly resolution as conceived in the Enterprise's plan;

(ii) Any actions or steps the Enterprise has taken or proposes to take, or which other market participants could take, to remediate or otherwise mitigate the weaknesses or impediments identified by the Enterprise; and

(iii) A timeline for the remedial or other mitigating action that the Enterprise proposes to take; and

(4) Provide a detailed description of the processes the Enterprise employs for—

(i) Determining the current market values and marketability of the core business lines and material asset holdings of the Enterprise;

(ii) Assessing the feasibility of the Enterprise's plans (including timeframes) for executing any sales, divestitures, restructurings, recapitalizations, or other similar actions contemplated in the Enterprise's resolution plan; and

(iii) Assessing the impact of any sales, divestitures, restructurings, recapitalizations, or other similar actions on the value, funding, and operations of the Enterprise and its core business lines.

(e) *Corporate governance relating to resolution planning.* Each resolution plan shall:

(1) Include a detailed description of—

(i) How resolution planning is integrated into the corporate governance structure and processes of the Enterprise;

(ii) The process for identifying core business lines, including a description of the Enterprise's methodology considering the requirements of § 1242.3(a);

(iii) Enterprise policies, procedures, and internal controls governing preparation and approval of the resolution plan; and

(iv) The nature, extent, and frequency of reporting to Enterprise senior executive officers and the board of directors regarding the development, maintenance, and implementation of the Enterprise's resolution plan;

(2) Provide the identity and position of the Enterprise senior management official primarily responsible for overseeing the development, maintenance, implementation, and submission of the Enterprise's resolution plan and for the Enterprise's compliance with this part;

(3) Describe the nature, extent, and results of any contingency planning or similar exercise conducted by the Enterprise since the date of the Enterprise's most recently submitted resolution plan to assess the viability of or improve the resolution plan of the Enterprise; and

(4) Identify and describe the relevant risk measures used by the Enterprise to report credit risk exposures both internally to its senior management and board of directors, as well as any relevant risk measures reported externally to investors or to FHFA.

(f) *Organizational structure, interconnections, and related information.* Each resolution plan shall:

(1) Provide a detailed description of the Enterprise's organizational structure, including—

(i) A list of all affiliates and trusts within the Enterprise's organization that identifies for each affiliate and trust (legal entity), the following information (provided that, where such information would be identical across multiple legal entities, it may be presented in relation to a group of identified legal entities):

(A) The percentage of voting and nonvoting equity of each legal entity listed; and

(B) The location, jurisdiction of incorporation, licensing, and key management associated with each material legal entity identified;

(ii) A mapping of the Enterprise's operations, services, functions, and supports associated with each of its core business lines, identifying—

(A) The entity, including any third-party providers, responsible for conducting each associated operation or service that supports the functioning of each core business line as well as the Enterprise's material asset holdings; and

(B) Liabilities related to such operations, services, and core business lines;

- (2) Provide an unconsolidated balance sheet for the Enterprise and a consolidating schedule for all securitization trusts consolidated by the Enterprise;
- (3) Provide a schedule showing all assets and liabilities of unconsolidated Enterprise securitization trusts;
- (4) Include a description of the material components of the liabilities of the Enterprise and each identified core business line that, at a minimum, separately identifies types and amounts of the short-term and long-term liabilities, secured and unsecured liabilities, and subordinated liabilities;
- (5) Identify and describe the processes used by the Enterprise to—
- (i) Determine to whom the Enterprise has pledged collateral;
 - (ii) Identify the person or entity that holds such collateral; and
 - (iii) Identify the jurisdiction in which the collateral is located, and, if different, the jurisdiction in which the security interest in the collateral is enforceable against the Enterprise;
- (6) Describe any material off-balance sheet exposures (including guarantees and contractual obligations) of the Enterprise, including a mapping to each of its core business lines;
- (7) Describe the practices of the Enterprise and its core business lines related to the booking of trading and derivatives activities;
- (8) Identify material hedges of the Enterprise and its core business lines related to trading and derivative activities, including a mapping to legal entity;
- (9) Describe the hedging strategies of the Enterprise;
- (10) Describe the process undertaken by the Enterprise to establish exposure limits;
- (11) Identify the third-party providers with which the Enterprise has significant business connections (including third parties performing or providing operations,

services, functions, or supports associated with each core business line) and describe the business connections, dependencies and relationships with such third party;

(12) Report on the counterparty credit risk exposure to—

(i) The 20 largest single-family mortgage sellers and the 20 largest single-family mortgage servicers to the Enterprise (where “largest” is determined as of the end of the quarter preceding submission of a resolution plan, and the Enterprise includes an entity that is among the largest in both categories in each separate report category); and

(ii) All multifamily sellers and servicers to the Enterprise, based on purchasing volume during the preceding year.

(13) Report on insurance in force, risk in force, and exposure and potential future exposure related to all providers of loan-level mortgage insurance;

(14) Analyze whether the failure of a third-party provider to an Enterprise would likely have an adverse impact on an Enterprise or result in the Enterprise becoming in danger of default or in default, the availability of alternative providers, and the ability of the Enterprise to change providers when necessary; and

(15) Identify each trading, payment, clearing, or settlement system of which the Enterprise, directly or indirectly, is a member and on which the Enterprise conducts a material number or value amount of trades or transactions, and map membership in each such system to the Enterprise and its core business lines.

(g) *Management information systems.* (1) Each resolution plan shall include:

(i) A detailed inventory and description of the key management information systems and applications, including systems and applications for risk management, automated underwriting, valuation, accounting, and financial and regulatory reporting, used by the Enterprise, and systems and applications containing records used to manage all qualified financial contracts. The description of each system or application provided shall identify the legal owner or licensor, the use or function of the system or application,

service level agreements related thereto, any software and system licenses, and any intellectual property associated therewith;

(ii) A mapping of the key management information systems and applications to core business lines of the Enterprise that use or rely on such systems and applications;

(iii) An identification of the scope, content, and frequency of the key internal reports that senior management of the Enterprise and core business lines use to monitor the financial health, risks, and operation of the Enterprise and core business lines;

(iv) A description of the process for FHFA to access the management information systems and applications identified in this paragraph (g); and

(v) A description and analysis of—

(A) The capabilities of the Enterprise's management information systems to collect, maintain, and report, in a timely manner to management of the Enterprise and to FHFA, the information and data underlying the resolution plan; and

(B) Any gaps or weaknesses in such capabilities, and a description of the actions the Enterprise intends to take to promptly address such gaps, or weaknesses, and the timeframe for implementing such actions.

(h) *Identification of point of contact.* The Enterprise senior management official responsible for serving as a point of contact regarding the resolution plan shall be identified in the resolution plan.

§ 1242.6 Form of resolution plan; confidentiality.

(a) *Form of resolution plan—*(1) *Generally.* Each resolution plan of an Enterprise shall be divided into a public section and a confidential section. Each Enterprise shall segregate and separately identify the public section from the confidential section.

(2) *Content of public section.* The public section of a resolution plan shall clearly reflect required and prohibited assumptions set forth at § 1242.5(b) and consist of an

executive summary of the resolution plan that describes the business of the Enterprise and includes, to the extent material to an understanding of the Enterprise:

(i) A description of each core business line, including associated operations and services;

(ii) Consolidated or segment financial information regarding assets, liabilities, capital and major funding sources;

(iii) A description of derivative activities, hedging activities, and credit risk transfer instruments;

(iv) A list of memberships in material payment, clearing and settlement systems;

(v) The identities of the principal officers;

(vi) A description of the corporate governance structure and processes related to resolution planning;

(vii) A description of material management information systems; and

(viii) A description, at a high level, of strategies to facilitate resolution, covering such items as the range of potential purchasers of the Enterprise's core business lines and other significant assets, as well as measures that, if taken by the Enterprise, could minimize the risk that its resolution would have serious adverse effects on the national housing finance markets and minimize the amount of potential loss to the Enterprise's investors and creditors.

(b) *Confidential treatment of resolution plan.* (1) The confidentiality of each resolution plan and related materials shall be determined in accordance with applicable exemptions under the Freedom of Information Act (5 U.S.C. 552(b)), 12 CFR part 1202 (FHFA's regulation implementing the Freedom of Information Act), and 12 CFR part 1214 (FHFA's regulation on the availability of non-public information).

(2) An Enterprise submitting a resolution plan or related materials pursuant to this part that desires confidential treatment of the information under 5 U.S.C. 552(b)(4), 12

CFR part 1202 (Freedom of Information Act), and 12 CFR part 1214 (availability of non-public information) may file a request for confidential treatment in accordance with those rules.

(3) To the extent permitted by law, information comprising the confidential section of a resolution plan will be treated as confidential.

(4) To the extent permitted by law, the submission of any nonpublic data or information under this part shall not constitute a waiver of, or otherwise affect, any privilege arising under Federal or state law (including the rules of any Federal or state court) to which the data or information is otherwise subject. The submission of any nonpublic data or information under this part shall be subject to the examination privilege.

§ 1242.7 Review of resolution plans; resubmission of deficient resolution plans.

(a) *FHFA acceptance of resolution plan; review for completeness.* (1) After receipt of a resolution plan, FHFA will either acknowledge acceptance of the plan for review or return the resolution plan if FHFA determines that it is incomplete or that substantial additional information is required to facilitate review of the resolution plan.

(2) If FHFA determines that a resolution plan is incomplete or that substantial additional information is necessary to facilitate review of the resolution plan:

(i) FHFA shall provide notice to the Enterprise in writing of the area(s) in which the resolution plan is incomplete or with respect to which additional information is required; and

(ii) Within 30 days after receiving such notice (or such other time period as FHFA may establish in the notice), the Enterprise shall resubmit a complete resolution plan or such additional information as requested to facilitate review of the resolution plan.

(b) *FHFA review of complete plan; determination regarding deficient resolution plan.* (1) Following review of a complete resolution plan, FHFA will send a notification to each Enterprise that:

(i) Identifies any deficiencies or shortcomings in the Enterprise's resolution plan (or confirms that no deficiencies or shortcomings were identified);

(ii) Identifies any planned actions or changes set forth by the Enterprise that FHFA agrees could facilitate a rapid and orderly resolution of the Enterprise; and

(iii) Provides any other feedback on the resolution plan (including feedback on timing of actions or changes to be undertaken by the Enterprise). FHFA will send the notification no later than 12 months after accepting a complete plan, unless FHFA determines in its discretion that extenuating circumstances exist that require delay.

(2) For purposes of paragraph (b)(1) of this section, a "deficiency" is an aspect of an Enterprise's resolution plan that FHFA determines presents a weakness that, individually or in conjunction with other aspects, could undermine the feasibility of the Enterprise's resolution plan. A "shortcoming" is a weakness or gap that raises questions about the feasibility of an Enterprise's resolution plan, but does not rise to the level of a deficiency. If a shortcoming is not satisfactorily explained or addressed before or in the submission of the Enterprise's next resolution plan, it may be found to be a deficiency in the Enterprise's next resolution plan. FHFA may identify an aspect of an Enterprise's resolution plan as a deficiency even if such aspect was not identified as a shortcoming in an earlier resolution plan submission.

(c) *Resubmission of a resolution plan.* Within 90 days of receiving a notice of deficiency, or such shorter or longer period as FHFA may establish by written notice to the Enterprise, an Enterprise shall submit a revised resolution plan to FHFA that addresses all deficiencies identified by FHFA, and that discusses in detail:

(1) Revisions to the plan made by the Enterprise to address the identified deficiencies;

(2) Any changes to the Enterprise's business operations and corporate structure that the Enterprise proposes to undertake to address a deficiency (including a timeline for completing such changes); and

(3) Why the Enterprise believes that the revised resolution plan is feasible and would facilitate a rapid and orderly resolution by FHFA as receiver.

§ 1242.8 No limiting effect or private right of action.

(a) *No limiting effect on resolution proceedings.* A resolution plan submitted pursuant to this part shall not have any binding effect on FHFA when appointed as conservator or receiver under 12 U.S.C. 4617.

(b) *No private right of action.* Nothing in this part creates or is intended to create a private right of action based on a resolution plan prepared or submitted under this part or based on any action taken by FHFA with respect to any resolution plan submitted under this part.

Mark A. Calabria,
Director, Federal Housing Finance Agency.

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